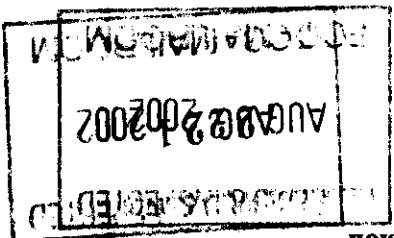


Before the

Federal Communications Commission  
Washington, DC 20554



File No. SLD-265004

CC Docket No. 96-45 ✓

CC Docket No. 97-21

## ORDER

**Adopted:** August 14, 2002      **Released:** August 15, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division is a Request for Review filed by the Arlington County Department of Libraries (Arlington), Virginia.<sup>1</sup> Arlington seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying Arlington's Funding Year 2001 requests for discounts under the schools and libraries universal service support mechanism.<sup>2</sup> For the reasons set forth below, we deny Arlington's Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> In order to receive discounts on eligible services, the Commission's rules require that the applicant

<sup>1</sup> Letter from Ann Friedman, Arlington County Department of Libraries, to Federal Communications Commission, filed September 5, 2001 (Request for Review).

<sup>2</sup> See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c). In prior years, Funding Year 2001 was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 1999 and ended on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 1999. The funding period that began on July 1, 2000 and ended on June 30, 2001 is now known as Funding Year 2000, and so on.

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.<sup>4</sup> Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carriers with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.<sup>5</sup>

3. The Commission's rules provide a limited exemption from the 28-day competitive bid requirement when applicants have "existing contracts."<sup>6</sup> In relevant part, under section 54.511(c)(1), contracts entered into on or prior to July 10, 1997 are exempt from competitive bidding requirements for the duration of the contract, and need only report the pre-existing contract on an FCC Form 470 in order to seek discounts for the services provided under the contract.<sup>7</sup> However, voluntary extensions of such contracts are not exempt from competitive bidding requirements.<sup>8</sup> The Commission established this exemption because it did not wish to penalize schools and libraries that had to negotiate contracts prior to the date that the SLD website became fully operational.<sup>9</sup>

4. SLD denied Funding Request Numbers (FRNs) 688547, 688548, 688549, and 688550, finding that the requests were not supported by an FCC Form 470.<sup>10</sup> Arlington then filed the pending Request for Review, in which it asserts that its FRNs satisfied the competitive bidding rules because they seek services based on pre-existing contracts that were presented in its Funding Year 1999 and 2000 FCC Forms 470.<sup>11</sup>

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<sup>4</sup> 47 C.F.R. § 54.504 (b)(1), (b)(3).

<sup>5</sup> 47 C.F.R. § 54.504(c).

<sup>6</sup> 47 C.F.R. § 54.511(c).

<sup>7</sup> Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470), OMB 3060-0806 (September 1999) (Form 470 Instructions), at 4.

<sup>8</sup> 47 C.F.R. § 54.511(d)(1).

<sup>9</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

<sup>10</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Randolph Rice, Arlington County Department of Libraries, dated August 7, 2001 (Funding Commitment Decision Letter), at 6.

<sup>11</sup> Request for Review at 3.

5. We have reviewed the record. Each of the FRNs at issue cited FCC Form 470, App. No. 102500000215956 in support.<sup>12</sup> The Arlington Form 470 did not post any new services for bidding, but reported four pre-existing contracts.<sup>13</sup> According to the Arlington Form 470, the term of the first contract extended from April 3, 1997 to April 4, 2000, the term of the second from April 1, 1997 to March 31, 2000, the term of the third from May 1, 1997 to April 11, 2000, and the term of the fourth from November 26, 1996 to November 25, 2001.<sup>14</sup> Arlington is correct that contracts awarded on the dates reported on the Arlington Form 470 were awarded prior to July 10, 1997 and such contracts would qualify as pre-existing contracts exempt from competitive bidding.

6. However, on each of the FRNs at issue in this appeal, Arlington specified that it sought discounts on a contract awarded after July 10, 1997.<sup>15</sup> Specifically, FRN 688547 specified a contract award date of January 14, 2000, FRN 688548 specified a contract award date of January 14, 2000, FRN 688549 specified a contract award date of December 17, 2000, and FRN 688550 specified a contract award date of December 17, 2000.<sup>16</sup> Because the award dates are after July 10, 1997, the contracts do not qualify as pre-existing contracts, and Arlington was required to post these contracts for bidding with an FCC Form 470. We have not found any FCC Form 470 that posted these requests for bidding in Funding Year 2001. We therefore find that Arlington failed to post its new contracts for bidding, in violation of the competitive bidding requirements.

7. Arlington argues that its current contracts should qualify as existing contracts because they are the same services Arlington received in Funding Years 1998 through 2000, and are provided by the same providers.<sup>17</sup> Arlington also offers a copy of two service agreements, one from Verizon and one from Sprint, to support its assertion that its FRNs seek support for services obtained pursuant to multi-year pre-existing contracts.<sup>18</sup> After reviewing the service agreements, however, we find that they do not support the existence of a multi-year pre-existing contract because they were not awarded on or prior to July 10, 1997. The Verizon contract plainly indicates that it was awarded on November 27, 2000, and the Sprint contract indicates that it was awarded on January 2, 2001.<sup>19</sup> Although, as Arlington notes, the contracts do reflect that they involve services offered as part of a multi-year relationship, they also make clear that

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<sup>12</sup> FCC Form 471, Arlington County Department of Libraries, filed January 17, 2001 (Arlington Form 471), at 3-4. See FCC Form 470, Arlington County Department of Libraries, filed March 1, 1999 (Arlington Form 470).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 2.

<sup>15</sup> Arlington Form 471 at 3-4.

<sup>16</sup> *Id.*

<sup>17</sup> Request for Review at 3.

<sup>18</sup> *Id.* at 3-4; Request for Review, Attachment.

<sup>19</sup> Request for Review, Attachment. We also note that these contracts have award dates different than the January 14, 2000 and December 17, 2000 contract award dates specified in the four FRNs. See Arlington Form 471 at 3-4.

the annual renewal of the relationship by Arlington in Funding Year 2001 was voluntary.<sup>20</sup> Voluntary renewal of pre-existing contracts do not qualify as pre-existing contracts themselves.<sup>21</sup> Because the contracts were awarded after July 10, 1997, they do not qualify as pre-existing contracts.

8. Arlington argues that its sister-school applied for similar services and received discounts.<sup>22</sup> However, the reason for the different outcome is readily apparent. Unlike Arlington, the school system did post a new FCC Form 470 bidding those services.<sup>23</sup>

9. Because we find that Arlington did not post its new contracts for bidding in Funding Year 2001, we find that SLD correctly determined that Arlington had not satisfied the competitive bidding requirements.

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Arlington County Department of Libraries, Arlington, Virginia, on September 5, 2001 IS DENIED.

## FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireless Competition Bureau

<sup>20</sup> See Request for Review, Attachment (Verizon-Virginia, Inc. Contract) (stating that "[y]our firm is awarded the above referenced contract" and that "[t]his is the Eighth year award notice of a possible TEN year contract"). Whether Arlington's service in previous years was also voluntary and thus erroneously funded by SLD is not clear on the record.

<sup>21</sup> 47 C.F.R. § 54.511(d)(1).

<sup>22</sup> Request for Review at 4.

<sup>23</sup> *Id.*